

Responses to Allegations

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2 1. Admit that Plaintiff has correctly quoted from the Ninth Circuit's *Lockyer*
3 decision, but deny the remaining allegations in paragraph 1 of the Second Amended
4 Complaint.

5 2. Deny the allegations contained in paragraph 2 of the Second Amended Complaint.

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7 3. Admit that DWR seeks a declaration that all the contracts or transactions with
8 Powerex from January 17, 2001 through December 31, 2001 are void and of no force and
9 effect, but deny that there is any legal or factual basis for DWR's claim.

10 4. Admit the allegations contained in paragraph 4 of the Second Amended
11 Complaint, but note that California Energy Resources Scheduling Division is a division of
12 DWR and has no separate legal standing.

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14 5. Admit the allegations contained in paragraph 5 of the Second Amended
15 Complaint.

16 6. Deny the allegations contained in paragraph 6 of the Second Amended Complaint.
17 Powerex further notes that this Court's August 21, 2008 order specifically dismissed the Doe
18 Defendants.

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20 7. Deny the allegations contained in paragraph 7 of the Second Amended Complaint.

21 8. Deny the allegations contained in paragraph 8 of the Second Amended Complaint.

22 9. Deny the allegations contained in paragraph 9 of the Second Amended Complaint.

23 10. Admit the allegations contained in paragraph 10 of the Second Amended
24 Complaint.

25 11. Admit the allegations contained in paragraph 11 of the Second Amended
26 Complaint, but note that while Powerex is headquartered in Canada, it is organized under the
27 laws of British Columbia.
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1 12. Admit the allegations contained in paragraph 12 of the Second Amended
2 Complaint.

3 13. Admit the allegations contained in paragraph 13 of the Second Amended
4 Complaint.

5 14. Admit the allegations contained in paragraph 14 of the Second Amended
6 Complaint.

7 15. Admit the first two sentences of paragraph 15 of the Second Amended Complaint.
8 Powerex is without sufficient knowledge or information to form a belief as to the truth of the
9 allegations contained in the third sentence of paragraph 15 of the Second Amended
10 Complaint.
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12 16. Admit the allegations contained in paragraph 16 of the Second Amended
13 Complaint.
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15 17. Admit the allegations contained in the first four sentences of paragraph 17 of the
16 Second Amended Complaint. Powerex is without sufficient knowledge or information to
17 form a belief as to the truth of the allegations contained in the fifth sentence of paragraph 17
18 of the Second Amended Complaint.
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20 18. Admit the allegations contained in paragraph 18 of the Second Amended
21 Complaint.
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23 19. Admit the allegations contained in the first and fourth sentences of paragraph 19
24 of the Second Amended Complaint. Deny the allegations contained in the second and third
25 sentences of paragraph 19 of the Second Amended Complaint.

26 20. Powerex is without sufficient knowledge or information to form a belief as to the
27 truth of the allegations contained in paragraph 20 of the Second Amended Complaint.
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1 21. Admit the allegations contained in paragraph 21 of the Second Amended
2 Complaint.

3 22. Admit the allegations contained in paragraph 22 of the Second Amended
4 Complaint.

5 23. Powerex is without sufficient knowledge or information to form a belief as to the
6 truth of the allegations contained in the first sentence of paragraph 23 of the Second
7 Amended Complaint. Admit the remaining allegations contained in paragraph 23 of the
8 Second Amended Complaint.
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10 24. Powerex is without sufficient knowledge or information to form a belief as to the
11 truth of the allegations contained in paragraph 24 of the Second Amended Complaint.
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13 25. Powerex is without sufficient knowledge or information to form a belief as to the
14 truth of the allegations contained in the first sentence of paragraph 25 of the Second
15 Amended Complaint. Deny the allegations contained in the second sentence of paragraph 25
16 of the Second Amended Complaint.

17 26. Admit the allegations contained in the third sentence of paragraph 26 of the
18 Second Amended Complaint. Deny the remaining allegations contained in paragraph 26 of
19 the Second Amended Complaint.
20

21 27. Deny the allegations contained in paragraph 27 of the Second Amended
22 Complaint.

23 28. Powerex is without sufficient knowledge or information to form a belief as to the
24 truth of the allegations contained in the first and second sentences of paragraph 28 of the
25 Second Amended Complaint. Deny the allegations contained in the third and fourth
26 sentences of paragraph 28 of the Second Amended Complaint.
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1 29. Admit the allegations contained in the first sentence of paragraph 29 of the
2 Second Amended Complaint. Powerex is without sufficient knowledge or information to
3 form a belief as to the truth of the remaining allegations contained in paragraph 29 of the
4 Second Amended Complaint.

5 30. Powerex is without sufficient knowledge or information to form a belief as to the
6 truth of the allegations contained in the first and third sentences of paragraph 30 of the
7 Second Amended Complaint. Deny the allegations contained in the second and fourth
8 sentences of paragraph 30 of the Second Amended Complaint.

9 31. Admit the allegations contained in the first sentence of paragraph 31 of the
10 Second Amended Complaint. Powerex is without sufficient knowledge or information to
11 form a belief as to the truth of the remaining allegations contained in paragraph 31 of the
12 Second Amended Complaint.

13 32. Admit the allegations contained in the first sentence of paragraph 32 of the
14 Second Amended Complaint. Deny the allegations contained in the second sentence of
15 paragraph 32 of the Second Amended Complaint.

16 33. Deny the allegations contained in paragraph 33 of the Second Amended
17 Complaint.

18 34. Deny the allegations contained in paragraph 34 of the Second Amended
19 Complaint.

20 35. Deny the allegations contained in paragraph 35 of the Second Amended
21 Complaint.

22 36. Deny the allegations contained in paragraph 36 of the Second Amended
23 Complaint.

1 37. Deny the allegations contained in paragraph 37 of the Second Amended
2 Complaint, except as qualified by the responses to paragraphs 1-36 above.

3 38. Deny the allegations contained in paragraph 38 of the Second Amended
4 Complaint.

5 39. Deny the allegations contained in paragraph 39 of the Second Amended
6 Complaint, except as qualified by the responses to paragraphs 1-38 above.

7 40. Deny the allegations contained in paragraph 40 of the Second Amended
8 Complaint.

9 41. Deny the allegations contained in paragraph 41 of the Second Amended
10 Complaint, except as qualified by the responses to paragraphs 1-40 above.

11 42. Admit that DWR has correctly quoted from California Civil Code
12 Section 1689(b)(6).

13 43. Deny the allegations contained in paragraph 43 of the Second Amended
14 Complaint.

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17 **AFFIRMATIVE DEFENSES**

18 1. **First Defense (Failure to State a Cause of Action):** As a first, separate and
19 distinct affirmative defense to the Second Amended Complaint, Powerex alleges that
20 plaintiff's Second Amended Complaint, and each cause of action therein, fails to state facts
21 sufficient to constitute a cause of action.

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23 2. **Second Defense (Exclusive Jurisdiction):** As a second, separate and distinct
24 affirmative defense to the Second Amended Complaint, Powerex alleges that plaintiff's
25 Second Amended Complaint herein, and each cause of action therein, is barred by the
26 doctrine of exclusive jurisdiction because the determination of material issues lies
27 exclusively within the jurisdiction of the Federal Energy Regulatory Commission.
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1 3. **Third Defense (Filed Rate Doctrine):** As a third, separate and distinct
2 affirmative defense to the Second Amended Complaint, Powerex alleges that plaintiff's
3 claims are barred by the filed rate doctrine.

4 4. **Fourth Defense (Preemption):** As a fourth, separate and distinct affirmative
5 defense to the Second Amended Complaint, Powerex alleges that plaintiff's claims are barred
6 by federal preemption (both conflict and field preemption).
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8 5. **Fifth Defense (Failure to Mitigate):** As a fifth, separate and distinct affirmative
9 defense to the Second Amended Complaint, Powerex alleges that plaintiff has failed to
10 mitigate its damages.

11 6. **Sixth Defense (Consent):** As a sixth, separate and distinct affirmative defense to
12 the Second Amended Complaint, Powerex alleges that plaintiff knowingly and willingly
13 expressly or impliedly consented to the matters described in the second amended complaint.
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15 7. **Seventh Defense (Equitable Defenses):** As a seventh, separate and distinct
16 affirmative defense to the Second Amended Complaint, Powerex alleges that principles of
17 equity and equitable considerations bar all relief requested by plaintiff against this answering
18 defendant.
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20 8. **Eighth Defense (Unclean Hands):** As an eighth, separate and distinct
21 affirmative defense to the Second Amended Complaint, Powerex alleges that plaintiff's
22 Second Amended Complaint, and each cause of action therein, is barred by the doctrine of
23 unclean hands.
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1 9. **Ninth Defense (Failure to Pursue/Exhaust Other Remedies):** As a ninth,
2 separate and distinct affirmative defense to the Second Amended Complaint, Powerex alleges
3 that plaintiff has failed to proceed first against the answering defendant before the Federal
4 Energy Regulatory Commission.

5 10. **Tenth Defense (Laches):** As a tenth, separate and distinct affirmative defense to
6 the Second Amended Complaint, Powerex alleges that plaintiff's Second Amended
7 Complaint, and each cause of action therein, is barred by the doctrine of laches.
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9 11. **Eleventh Defense (Fault of Others):** As an eleventh, separate and distinct
10 affirmative defense to the Second Amended Complaint, Powerex alleges that said harm, loss,
11 or wrong, was either wholly or in part caused by persons, firms, corporations or entities other
12 than this answering defendant, and said fault is either imputed to said plaintiff by reason of
13 the relationship of said parties to plaintiff and/or comparatively reduces the percentage of
14 responsibility, of this answering defendant.
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16 12. **Twelfth Defense (Estoppel):** As a twelfth, separate and distinct affirmative
17 defense to the Second Amended Complaint, Powerex alleges that plaintiff's Second
18 Amended Complaint, and each cause of action therein, is barred by the doctrine of estoppel.
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20 13. **Thirteenth Defense (Unjust Enrichment):** As a thirteenth, separate and distinct
21 affirmative defense to the Second Amended Complaint, Powerex alleges that plaintiff's
22 Second Amended Complaint, and each cause of action therein, is barred because relief could
23 constitute unjust enrichment.
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25 14. **Fourteenth Defense (Standing):** As a fourteenth, separate and distinct
26 affirmative defense to the Second Amended Complaint, Powerex alleges that plaintiff's
27 Second Amended Complaint, and each cause of action therein, is barred because plaintiff
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1 lacks standing to pursue claims on behalf of the California Energy Resources Scheduling
2 (CERS).

3 15. **Fifteenth Defense (Reservation of Additional Affirmative Defenses):** As a
4 fifteenth, separate and distinct affirmative defense to the Second Amended Complaint,
5 Powerex alleges that because plaintiff's claims are framed in broad and conclusory language,
6 defendant reserves the right to assert other affirmative defenses as may be warranted as
7 discovery in this action proceeds.
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9 **CONCLUSION**

10 Powerex asks that plaintiff take nothing by its Second Amended Complaint, that
11 judgment be rendered in favor of Powerex and against plaintiff, with Powerex awarded costs
12 of suit, attorneys' fees, and such other and further relief as the court may deem appropriate.
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14 DATED: October 6, 2008

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